

(2024) 05 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Writ Petition (Criminal) No. 503 Of 2023

Zahoor Ahmad Lone

APPELLANT

Vs

Union Territory Of J&K & Ors

RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Jammu And Kashmir Public Safety Act, 1978 — Section 8(a)

Citation : (2024) 05 J&K CK 0035

Hon'ble Judges : M.A. Chowdhary, J

Bench : Single Bench

Advocate : Syed Avees Geelani, Jahangir Dar

Final Decision : Disposed Of

Judgement

M. A. Chowdhary, J

1. In this Habeas Corpus Petition, petitioner challenges the Detention Order No. 60/DMB/PSA/2022 dated 27.06.2022 passed by District Magistrate Baramulla, under Clause (a) of Section 8 of the Jammu and Kashmir Public Safety Act, 1978 (for short the 'Act'), directing preventive detention of the petitioner Zahoor Ahmad Lone (for short 'detenue'), in the interest of security of the State.

2. The preventive detention of the detenue is challenged on various grounds inter alia that the detaining authority has passed the order of detention on the basis of dossier and other connected documents submitted by the Senior Superintendent of Police Sopore. No relevant documents/material were provided to the detenue depriving him of a valuable right of making an effective and meaningful representation. It is further contended that normal law was never invoked nor it is mentioned anywhere in the grounds of detention that the normal law was ever invoked and the detaining authority has made this assumption without any basis. On this ground also the order suffers from non-application of mind and deserves to be quashed. Furthermore, it is stated that the detenue was incapacitated in

filing a representation as the grounds of detention are hyper technical in nature i.e. not in a language which could be understood by the detainee. It is being stated that being 8th pass only, it is not possible for him to understand such a hyper technical language.

3. Pursuant to notice, respondents have filed their reply, asserting therein that the detainee came to be detained under the provisions of the Act of 1978 validly and legally by virtue of the impugned detention order. While doing so, all statutory requirements and constitutional guarantees have been fulfilled and complied with by the detaining authority, indisputably keeping in mind the very object of law of preventive detention being not punitive but only preventive. The detaining authority was of the opinion that the normal law has not proved deterrent and the detainee has not mended his subversive activities. Since the activities of the detainee were highly prejudicial to the security of the State and there was every likelihood that he will again indulge in same activities, it was necessary to prevent him from acting in such activities, accordingly, he has been detained strictly in accordance with the provisions of the Act.

4. Learned counsel for the detainee submitted that non-application of mind by the detaining authority is writ large from the grounds of detention, which is nothing more than the reiteration of the contents of the dossier furnished by the Superintendent of Police Sopore and the detaining authority has acted mechanically. It is his further submission that normal law in such circumstances was sufficient to prevent the detainee from indulging in alleged activities prejudicial to the security of the State. In this regard learned counsel for the detainee has taken reliance on various judgments.

5. It is being also contended that it would be in fundamental breach of Article 22(5) of the Constitution of India if the detainee is not provided relevant documents on the basis of which detaining authority has arrived at subjective satisfaction. Since the detainee would be disabled to submit a meaningful and effective representation, breach of same cannot be countenanced on any count.

6. Learned GA, appearing for the respondents, however, supported the impugned order. He referred the detention order (supra) to demonstrate that the detaining authority had arrived at a satisfaction that the detainee has no respect for law. Since, he believes in breaking the law repeatedly and terrorizing the people of the area, therefore, the normal law was not sufficient to deal with him.

7. Heard learned counsel for both the sides, perused the detention record and considered the matter.

8. Perusal of the grounds formulated by the detaining authority leading to preventive detention of the detainee, reveals that he has voluntarily developed contacts with various terrorist/secessionist organizations and as per credible reports received, he had voluntarily associated with terrorist organization 'LeT', which had orchestrated civilian killings in Kashmir; that he had been providing logistic support including food, shelter and transportation of arms of terrorists

from one place to another and people have been made to pay protection money to 'LeT' through OGWs including detainee. It was apprehended that the detainee, as an OGW of 'LeT', may disrupt the peaceful conduct of annual 'Shri Amar Nath Ji Yatra 2022', as such, it became imperative to detain him, in the prevention of activities prejudicial to the security of the State.

9. On perusal of the detention record, it transpires that there is no mention of any such activity attributed to the detainee which can be said to be prejudicial to the security of the State. There is no instance of any activity as attributed to the detainee in whole of the grounds of the detention. The grounds are, thus, general and vague in nature. This has rendered the detention order unjustified and unreasonable in the eyes of the law.

10. Perusal of the detention record further reveals that the detainee has not been furnished all the documents; he has only been furnished copies of detention order, notice of detention and grounds of detention, total four leaves. He has neither been provided with a copy of dossier of detention nor any other related document. This means that he was not provided with whole of the material, which based his detention. The failure on the part of the detaining authority to supply material, renders detention illegal and unsustainable. In this regard, the Hon'ble Apex Court in the judgment rendered in the case of "Sophia Gulam Mohd. Bham V. State of Maharashtra & Ors. (AIR 1999 SC 3051), has held as under:-

"The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detainee to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language."

11. It has already been held in various judgments by the Apex Court that in case the detainee has not been provided whole of the relevant material on which the subjective satisfaction is stemmed, same renders the order of detention bad in law. It can be reasonably inferred that the detainee has not been in a position to make an effective representation, which is statutory and constitutional right of said detainee, due to this lapse of detaining authority and so it renders the impugned order bad.

12. In Smt. Icchu Devi Choraria Vs. Union of India & Ors. (AIR 1980 SC 1983), the Apex Court has observed as :-

"The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade."

"This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred."

13. It is also notable that normal law in the instant case had to be assumed to be sufficient to disable the detainee to indulge in any such activity which may have been in the estimation of the detaining authority to be treated prejudicial to the security of the State.

14. In view of the facts of the instant case and the law laid down by the Hon'ble Apex Court as referred above, the order of detention, impugned herein, does not sustain and is required to be quashed.

15. Accordingly, Petition is allowed and the impugned detention order bearing No. 60/DMB/PSA/2022 dated 27.06.2022 passed by District Magistrate Baramulla, is hereby quashed. As a sequel, personal liberty of the detainee namely Zahoor Ahmad Lone S/O Bashir Ahmad Lone R/O Fatehgarh, District Baramulla, is ordered to be restored forthwith, provided he is not warranted in other case(s).

16. Scanned copy of the detention record, as produced by learned counsel for the respondents, be returned back to him.

17. Disposed of, accordingly.